

(21,162.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 156.

OTIS G. FREEMAN, PLAINTIFF IN ERROR,

v.s.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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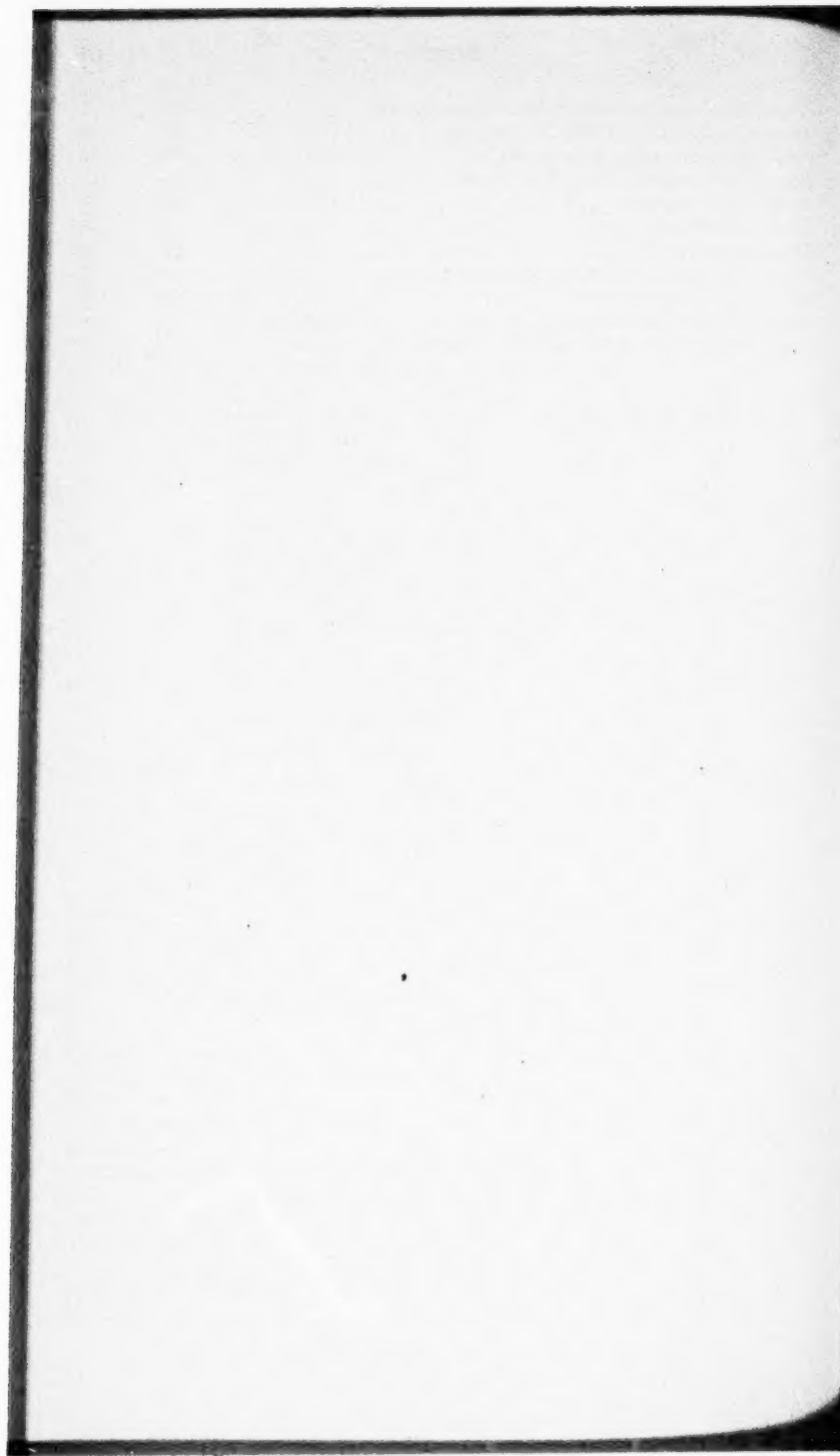
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1 Be it remembered, that on the eighth day of August, 1906, a complaint was filed in the Court of First Instance of the City of Manila of which the following is a copy, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

THE UNITED STATES, Plaintiff,

vs.

OTIS G. FREEMAN, Defendant.

Estafa.

Complaint.

The undersigned accuses Otis G. Freeman of the crime of estafa, committed as follows:

That on or about the 13th day of January, 1906, in the city of Manila, Philippine Islands, the said Otis G. Freeman was then and there a servant, clerk, agent, employee, and manager of the steamship department of Castle Bros., Wolf and Sons, a corporation doing business in the Philippine Islands; that, by virtue of his said duties and employment, there, then and there came into his possession and into his charge large sums of money belonging to the said Castle Bros., Wolf & Sons, which said sums of money were then and there received on deposit, for safe keeping, and under circumstances producing the obligation of delivering and returning the same to the said Castle Bros., Wolf and Sons; that the said Otis G. Freeman then and there willfully, unlawfully and feloniously did of said moneys so received and held under his charge as aforesaid, with intent of profiting thereby, and without the consent of the said Castle Bros., Wolf and Sons, appropriate, misapply and convert to his own use the sum of three thousand five hundred (3,500) pesos,

2 Philippine currency, equivalent and equal to seventeen thousand five hundred (17,500) pesetas, Philippine currency, the property of the said Castle Bros., Wolf and Sons; to the prejudice of the said Castle Bros., Wolf and Sons, in the said sum of three thousand five hundred (3,500) pesos, Philippine currency, equivalent to seventeen thousand five hundred (17,500) pesetas, Philippine currency;

Contrary to the form of the statute in such case made and provided.

(Signed)

GEORGE E. WOLF.

Subscribed and sworn to before me and in my presence, in the city of Manila, P. I., this 8 day of August, 1906, by George E. Wolf.

(Signed)

W. F. NORRIS,

Judge Court of First Instance,

City of Manila.

Witnesses.	Address.
George E. Wolf.....	Castle Bros.—Wolf & Sons.
R. C. Harty.....	do.
Harry Hanford.....	"
A. W. Baum.....	"

Ac/OL—8-8-06.

Bail recommended P5,000.

(On the first page is a stamp: "Court of First Instance Manila, P. I. Aug 8 1906. Clerk's Office.")

That on the same day, to-wit, the eighth day of August, 1906, an order of arrest was issued by the Honorable W. F. Norris, Judge of the Court of First Instance of Manila, Part I; and that on the same day the following order of arrest was also issued to wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 2733.

3

THE UNITED STATES
vs.
OTIS G. FREEMAN.

#10 "I" Street.

Order of Arrest.

(Indorsed: Filed 3/15 P. M. Aug. 8, 1906. Sheriff's Office, Manila.)

To any officer of the law:

You are hereby directed to arrest Otis. G. Freeman, said to be in Manila, who has been accused before me of the crime of estafa, and to bring him before me as soon as possible to be dealt with according to the law.

Manila, August 8, 1906.

(Signed)

W. F. NORRIS,
*Judge of the Court of First Instance of
the City of Manila, Part I.*

[SEAL OF THE COURT.]

That on the back of said order of arrest are the following indorsements, to-wit:

Service of Order of Arrest.

United States of America,

City of Manila.

On this date I have arrested Otis G. Freeman, and have placed him at the disposition of the Court.

Manila, August 8, 1906.

(Signed)

JAMES J. PETERSON,

Sheriff of Manila.

Sheriff's fees, P1.12.

I certify that today, August 8, 1906, the accused in this case has filed a personal bond to the satisfaction of the Court, which appears on folio 11 of Book 4 of Bonds, the sureties being Messrs. H. E. Heacock of 42 Plaza Goiti and M. A. Clarke of 2 Escolta, Binondo.

(Signed)

C. A. SOBRAL,

Assistant Clerk.

4 That on the 14th day of August, 1906, the following motion was filed, to-wit:

UNITED STATES OF AMERICA,

Philippine Islands:

In the Court of First Instance of the City of Manila.

Criminal Cause No. —.

THE UNITED STATES, Plaintiff,

vs.

OTIS G. FREEMAN, Defendant.

Motion for Bill of Particulars.

And now comes Otis G. Freeman, the defendant above named, by W. A. Kincaid, his attorney and moves the Court for an order directing that the complaint be made more definite and certain in this to-wit: Said defendant is charged in said complaint with receiving large sums of money on or about the 13th day of January, 1906; and before answering said complaint it is necessary that said defendant be informed of the particular amounts or sums of money received on or about said 13th day of January, 1906, by who said amounts were paid, and whether he, said defendant, is charged with the estafa of one particular amount received from some individual or firm, or whether said sum of thirty-five hundred pesos (P3,500.00) Philippine currency, was made up from other smaller amounts, or otherwise. Until said complaint is made definite and certain in the

particulars aforesaid, it is impossible for said defendant to intelligently answer the same.

Wherefore, defendant prays that said motion be granted.
Manila, P. I., August 11th, 1906.

(Signed)

W. A. KINCAID,
Attorney for Defendant,
26 Plaza Cervantes, Manila.

Received copy this 14th day of August, 1906.

(Sgd.)

AYLETT R. COTTON,
Prosecuting Att'y.

- 5 That on the 15th day of August, 1906, the following document was filed in the Court of First Instance, to-wit:

(Same Title and Heading.)

Affidavit in Support of Motion for Bill of Particulars.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Otis G. Freeman, having personal cedula Number A1331647 issued at Manila on the 26th day of January, 1906, came before me personally and being duly sworn, on oath, says: That he is the defendant above named; that the complaint in this cause was served upon him, said defendant, on the 8th day of August, 1906, that he has appeared in said cause but has not yet been arraigned; that the subject matter of this action is the alleged embezzlement of the sum of thirty-five hundred pesos on or about the 13th day of January, 1906; that said subject matter is alleged generally in the complaint without stating the particulars of the claim alleged, and defendant cannot safely answer or plead until a bill of particulars shall have been filed, for the reason that he, said defendant, is charged in said complaint with receiving large sums of money belonging to Castle Bros.-Wolf & Sons on January 13th, 1906, and before answering said complaint it is necessary that he, said defendant, be informed specifically regarding the following particulars: (a) A specific statement of the sums of money received by defendant on said 13th day of January; (b) from whom said amounts were received; (c) on what account said sums were paid; and (d) whether said sum of P3500 alleged to have been embezzled by him, said defendant, was received from some particular firm or individual, or whether said alleged sum was made up from other and smaller amounts.

Further deposing defendant says that he intends in good faith to defend this action but is ignorant of the particulars of the claim alleged in said complaint, and that he, said defendant cannot
6 intelligently or safely answer the same until a bill of particulars shall have been filed; and that the particulars stated wherein said complaint is indefinite and uncertain are material and necessary to his defense in this action.

That this affidavit is made in support of the motion heretofore filed on behalf of him, said defendant, and as a part thereof
(Signed) OTIS G. FREEMAN.

AYLETT R. COTTON.

Subscribed and sworn to before me, this 14th day of August, A. D. 1906, affiant present- his cedula above described.

My Commission expires December 31st, 1906.

THOMAS E. KEPNER,
Notary Public.

That on the 16th day of August, 1906, the following order was made:

(Same Title and Heading.)

This case came on to be heard upon motion for bill of particulars by counsel for the defendant, which motion being submitted to the Court upon argument of the counsel, was overruled.

To which ruling of the court the defendant excepts.

Dated, Manila, P. I., August 16, 1906.

(Signed)

W. F. NORRIS, Judge.

I certify that the parties have notice of the foregoing resolution. Manila, August 16, 1906.

(Signed)

C. A. SOBRAL, Ass't Clerk.

That thereafter, upon what date not appearing, the following application was filed; to-wit:

(Same Title and Heading.)

Application on Behalf of the Defendant for a Subpœna Duces Tecum.

And now comes said Otis G. Freeman, the defendant above named, by W. A. Kincaid his attorney and moves the Court for a
7 subpœna duces tecum to be directed to George E. Wolf, General Manager of Castle Brothers-Wolf & Sons of Manila, the prosecuting witness in the above entitled cause, directing him, said George E. Wolf to diligently and carefully search for, examine and enquire after, and bring with him and produce at the trial of the above entitled cause on the 27th day of August, 1906, all and singular the day-books, journals and ledgers comprising the books of account of said Castle Brothers, Wolf & Sons, together with all copies, drafts and vouchers relating to said books of account, and all other documents, letters, and papers, writings whatsoever, that can or may afford any information or evidence whatsoever in said cause; then and there to testify and show all and singularly those things which he, said George E. Wolf, knows or the said books of account, documents, drafts, and vouchers do import of, and concerning the above entitled cause.

And to the end that there may be no unnecessary delay in the trial of said cause, it is requested that the Court direct that he, said George E. Wolf deposit in court on or before Thursday, the 24th day of August, 1906, subject to the examination of said Otis G. Freeman, the defendant above named, and his Counsel, the books of account, copies, drafts, vouchers, and documents, aforesaid.

Manila, August 20, 1906.

(Signed)

W. A. KINCAID,

Attorney for Defendant, 26 Plaza Cervantes, Manila.

Received copy Aug. 21st.

(Sgd.)

C. L. BOUVE,

Assist. Pros. Att'y.

That thereafter, subpoenas were served upon George G. Freeman, R. C. Horthy, Harry Hanford and A. W. Baum.

That thereafter in the original record in said cause, the following proceedings appear; to-wit:

8 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance, City of Manila, Part I.

Criminal Case No. —.

THE UNITED STATES
versus
OTIS G. FREEMAN.

Estafa.

Before Hon. W. F. Norris, Judge.

August 8, 1906.

Appearances: Prosecuting Attorney Cotton, for the Government.

GEORGE E. WOLF, sworn by the Court in English to the complaint and to testify:

By Mr. COTTON:

Q. What is your name, residence and occupation?

A. George E. Wolf, 24 Calle Padre Faurer, business address 18 Plaza Moraga, general manager of Castle Bros. Wolf & Sons.

Q. You do a general business in the Philippine Islands?

A. Yes, sir.

Q. Do you know Otis G. Freeman?

A. I do.

Q. Has he been occupying some position in the firm of Castle Bros. Wolf & Sons during the last few years?

A. Yes, sir.

Q. What position?

A. Manager of the Steamship Department.

Q. What were his duties as manager of the steamship department?

A. To receive cash paid in transactions with the steamship companies and keep the accounts.

Q. Can you state if Otis G. Freeman is short in any of his
9 accounts with the firm of Castle Bros. Wolf & Sons?

A. I can.

Q. State from your books or otherwise how much he is short?

A. (Consults books.) On January 13, 1906, he had on hand a total of P12,185.93; he deposited P6,354.09 with the cashier in our office; he paid out P34 for incidentals, P50 to the Captain of the "Gulf of Venice" and should have had on hand a balance of P5,747.84, but he charged the Captain of the "Gulf of Venice" P3,500 which was never paid to the Captain.

Q. How do you know that it was never paid to the Captain of the steamer "Gulf of Venice"?

A. Because on posting from the cash book he charged up to the "Gulf of Venice" P3550 pesos but he credited the "Gulf of Venice" P3500 "in error."

Q. What do the words in the book "in error" mean?

A. Well, supposed to have made a mistake in charging the "Gulf of Venice" with P3500.

Q. In other words he credited himself with having paid the "Gulf of Venice" P3500 and afterwards stated in his own handwriting in the books that he did not pay the master of the "Gulf of Venice" 3500 pesos?

A. Yes, sir.

Q. Are all these books kept in his own handwriting?

A. Yes, sir.

Q. In the City of Manila?

A. Yes, sir.

Q. Has he ever turned into you this P3500?

A. He has not.

Mr. COTTON: That is all.

I hereby certify that foregoing is a true and correct Transcript of the testimony taken by me.

(No signature),
Official Reporter.

10 That thereafter, and on the 21st day of August, 1906, subpoenas were issued to the following, to-wit: George E. Wolf, R. C. Horty, Harry Hanford and A. W. Baum, which said subpoena- was served on the 27th day of August, 1906, as appears by the service certificate of the sheriff thereto attached.

That thereafter, and on the 23rd day of August, 1906, a subpoena- duces tecum was issued to George E. Wolf, which was served, as appears by the sheriff's certificate on the 27th day of the same month.

That thereafter, and on the sixth day of September, 1906, the following proceeding was had in the said cause; to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila, Part I.

No. 2733.

THE UNITED STATES

vs.

OTIS G. FREEMAN.

Pleading.

Present the Assistant Prosecuting Attorney of the City, Mr. C. L. Bouve, and the accused in this cause, known as Otis G. Freeman, accompanied by his attorney, Mr. Kepner representing Mr. Kincaid, who waived the reading of the complaint filed against him before this Court for the crime of estafa, a copy of the same having been given him before, and who pleaded "not guilty" of the crime of which he was accused in said complaint.

Manila, September 6, 1906.

(Signed)

C. A. SOBRAL, *Clerk.*

11 That thereafter, and on the 12th day of September, 1906, the following stipulation was filed in the Office of the Clerk of the Court of First Instance, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the City of Manila.

Case No. 2733.

THE UNITED STATES, Plaintiff,

vs.

OTIS G. FREEMAN, Defendant.

Estafa.

It is hereby stipulated and agreed, by and with the consent of the Court, that all proceedings in the above entitled case may be conducted in the English language, and that the records of the pleadings, the judgments and all papers need not be translated into the Spanish language.

(Signed)

AYLETT R. COTTON,

Prosecuting Attorney.

W. A. KINCAID,

By THOMAS E. KEPNER,

Attorney for Defendant.

Approved, Manila, 12-Sept. 1906.

(Sgd.) W. F. NORRIS, *Judge.*

That thereafter, and on the 13th day of September, 1906, a bill of particulars was filed in the office of the Clerk of the Court of First Instance, as follows, to-wit:

(Same Title and Heading.)

Bill of Particulars.

The following is a bill of particulars of the sums embezzled on which the complaint on file herein is founded:

That on or about November 1, 1903, the said Otis G. Freeman was employed as a servant, clerk, agent, employee and manager of the steamship department of Castle Brothers, Wolf & Sons; that he held this position from the said date until on or about the 28th day of July, 1903; that as such manager of the steamship department of the said Castle Brothers Wolf & Sons, he had sole custody and control of the books and funds of the steamship department of the said Castle Brothers, Wolf & Sons, and was under the duty and obligation of keeping true books of account of all the receipts and disbursements made by him as such manager of the steamship department of the said Castle Brothers, Wolf & Sons; that the said Otis G. Freeman, on page 6 of the cash book under his sole custody and control, and in which cash book it was his duty to enter all sums of money received and disbursements made by him as manager of the steamship department of the said Castle Brothers, Wolf & Sons, did make an entry dated January 13, 1906, that he then had on hand the sum of P10,719.38; that on the same date, he made the following further entries of money received by him:

"C. B. W. & S. Vale	P50.00
P. M. Co. P/o 12322 Spl. a/c U. S. N.	333.20
" " 12323 Ins. No. 7	312.50
C. B. W. & S. Vale	50.00
Ldg. China 76	9.80
No. 21 2.69 26 .50 41 .50 48 2.85	
68 1.13 70 .50 71 .50 72 1.13	
Gulf of Venice—Frt. 16 Hed. Stock @ £4/— £4	
@ 2/-3/8	630.15
Out Freight. No. 262 Doric 48	80.40
Ldg. Doric 48. No. 1 Younger50"
Making a total of	P12,185.92

That on page 7 of said cash book, and under the said date, January 13, 1906, he did make the following entries of sums of money disbursed by him as aforesaid manager of the steamship department of the said Castle Brothers, Wolf & Sons:

"C. B. W. & S. Deposit 2111 Jan'y 12	P6,354.09
Gulf of Venice Immigration " 8th	4.00
Cash Captain " 11th	3,550.00
Medical Services " 12th	30.00"

That on the same page and under the same date he did make an entry of having cash on hand to the amount of P2,247.84; that the entry of "Cash Captain Jan'y 11th P3550.00, so made in said cash book on said date January 13, 1906, as aforesaid, was a false entry and the said Otis G. Freeman did not on said 11th day of January, 1906, or at any other time, pay to the
 13 Captain of the steamship "Gulf of Venice" the sum of P3,550, but then and there did only pay to the said Captain of the said steamship "Gulf of Venice" a sum of money not greater than fifty pesos, Philippine currency; that by this false entry so made as aforesaid, the said defendant was enabled to falsely account for and conceal the embezzlement of the sum of 3500 pesos, Philippine currency, which he embezzled at this time or at some other time, the exact date or dates of the said embezzlement or embezzlements not being known to the undersigned or to Castle Brothers, Wolf & Sons, but only to the defendant; that the defendant appropriated the sum of 3,500 pesos from funds in his possession belonging to the said Castle Brothers, Wolf & Sons while he was employed as manager of the steamship department of the said Castle Brothers, Wolf and Sons, on or about January 13, 1906; that it is impossible for the undersigned or for Castle Brothers, Wolf & Sons to state at what time the defendant embezzled any particular sum of money comprising the said 3,500 pesos, or to show what particular items make up the said 3,500 pesos, or from what particular firm or individual any particular item of this 3,500 pesos was received, as this information is exclusively and solely within the knowledge of the defendant.

(Signed)

AYLETT R. COTTON,
Prosecuting Attorney.

Received copy Manila P. I. this 13th day of September, 1906.

(Signed)

THOMAS E. KEPNER,
For Attorney for Defendant.

That on the 12th day of September, 1906 subpoenas were issued for, and served on the 17th day of the same month upon George W. Wolf, R. C. Harty, Harry Hanford and A. W. Baum to be and appear in the Court of First Instance of Manila, Part 1, on the 20th day of the same month.

14 That thereafter, the date not appearing, a request was made by Mr. Aylett R. Cotton, Prosecuting Attorney, for subpoenas upon the following persons, to-wit:

Miss Jessie Lesser, Theodore J. Arms, Paymaster, U. S. Navy, H. E. Barrett (subpoena duces tecum) C. H. Fulloway, J. L. Pierce, E. W. Bauckham (subpoena duces tecum) and David Collins.

That thereafter, and on September 21st, 1906, the following notice was filed in the office of the Clerk of the Court of First Instance of the City of Manila, to-wit:

(Same Title and Heading.)

To the Defendant, Otis G. Freeman, and to William A. Kincaid, Esq., his attorney:

You and each of you are hereby notified, at the trial of the above-entitled action, which will take place in the Court of First Instance for the City of Manila on the 24th day of September, 1906, or at such other time as the Court may designate to produce the original trial balance of the Shipping Department of Castle Brothers, Wolf & Sons, of date December 31, 1905, to be used as evidence in the above-entitled action; otherwise secondary evidence of its contents will be introduced.

(Signed)

AYLETT R. COTTON,
Prosecuting Attorney.

Received copy Sep. 21, 1906.

W. A. KINCAID,
By J. B., *Chief Clerk.*

That thereafter, and on the 21st day of September, 1906, subpoenas were issued for the following to appear in the Court of First Instance upon the 24th day of September, to-wit:

E. W. Bauckham, Manager Manila Steam Laundry, H. E. Barrett, Treasury Bureau, C. H. Fulloway, J. L. Pierce and 15-222 David Collins, which as shown by the returns of the sheriff thereon were served upon the same day.

And that thereafter in the said record appear exhibits "I," "K," "L," "M," "N," "O," "P," "Q," "R," "S," "T," "U," "V," "W," "X," "Y," "Z," "AA" and "BB," copies of which are attached hereto.

* * * * *

223 Thereafter, and on the 12th day of October, 1906, sentence was rendered in said cause as follows, to-wit:

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance, City of Manila, Part I.

Criminal Case No. 2733.

THE UNITED STATES
versus
OTIS G. FREEMAN.

Estafa.

Sentence.

In the above entitled case the defendant, Otis G. Freeman, is accused of embezzlement alleged to have been committed on or about

the 13th of January, 1906, in misappropriating and wrongfully converting to his own use the sum of P3,500 Philippine Currency, the property of Castle Brothers, Wolf & Sons, a corporation doing business in the City of Manila, and which money had been deposited with defendant for the use of said Castle Brothers, Wolf & Sons, the defendant being at the time of said conversion, an employee and book-keeper in the service of said Castle Brothers, Wolf & Sons.

The evidence for the Government discloses that the defendant had been in the employment of Castle Brothers, Wolf & Sons for about three years, his services terminating on the 1st of July of the present year. That during this period he was in charge of the Steamship Department of said firm, receiving and disbursing moneys and keeping the books pertaining to said department. The Government submits in evidence, several books of account, consisting of cash books, journals and a ledger kept in the handwriting of defendant and which, it is claimed, show a shortage to the amount complained of, which deficit is unaccounted for by defendant and remains unexplained in said books. The prosecution also introduce certain statements made by defendant to the witnesses Wolf, Baum and Hosty, which it is claimed by the prosecution amount to a confession of defendant's guilt, and which, taken together with the entries in the books, prove conclusively the guilt of the defendant of the crime charged.

The defense admits that certain entries pointed out by the prosecution were erroneous, but that they were not wilfully made, or with the intent to defraud, it being claimed that irregularities arose for the reason that the defendant had not time to keep said books up to date, owing to the fact that he was overworked; that the practical duties of his department so occupied his time that he was unable to properly attend to the keeping of his books and accounts, and that mistakes occurred in consequence for which he should not be held accountable, and that no legal responsibility attaches to him for the entries in said books.

The defendant testifies that Mr. Lowenstein, manager of the business of Castle Brothers, Wolf & Sons, promised, at the time defendant entered the service of said firm, to pay him, defendant, 25% of the profits that might accrue from the steamship department, in addition to his regular salary; that on the 11th of January, the time of the entry of the false charge of P3,500 hereinafter mentioned, the said profits of said department amounted to some P40,000; that defendant's commission on the same as agreed to by Lowenstein, amounted to some P9,000.

The evidence shows that on the 11th of January, 1906, the defendant entered in his cash book, Exhibit "B" for the Government, "Cash paid to the Gulf of Venice, P3,500"; that this entry was false is admitted by defendant and defendant also stated to the witness, Baum, when asked by the latter regarding it, that it was false. The defendant explains this entry, however, by stating it was made for the purpose of keeping the amount of the balance of 2500 pesos (which he admits was shown to be deficient at the time) in his recollection, the 50 pesos being the sum

actually paid the Captain of the said steamer. The defendant testifies that said sum of P3,500 was subsequently transferred to the Insular Government Fund and to the account of the Pacific Mail Steamship Company, but fails to account for its final disposition.

The record also shows that twelve days before the false entry of the 11th of January, to-wit: on the 31st of December, 1905, the defendant struck a trial balance which he alleges was at the request of Mr. Lowenstein, showing a shortage in his accounts of some 3,000 pesos and that on June 30th, 1906, after a conversation with Mr. Wolf regarding the shortage in his books, he made up a trial balance wherein he acknowledged that he was short in his accounts in the sum of P2,078.50. The witness, Wolf, testified that he sent for the defendant to enquire into the condition of his books and that when defendant was accused of being short in his accounts, he admitted the fact but stated that it did not amount to more than 3,000 pesos and that when threatened with prosecution, defendant begged witness to await the arrival of his father, stating that it would kill his wife and father, and requested to assist in the straightening up of the books. Hosty testifies that when the defendant was

shown by him an entry of cash to the Captain of the Gulf of Venice, defendant remarked, "I do not know why I took the money" and in reply to the inquiry as to how much he had taken said, "About 2700 pesos" and also stated in reply to a question, that he did not know from what item he took the same.

The following cablegram sent to Lowenstein by defendant was introduced by the Government:

"Lowenstein, care Castle Brothers, Wolf & Sons, San Francisco; accounts are not in order, it is a large amount, can refund; can you appeal; suspend proceedings until further notice. Freeman."

The defense is interposed that a sum of money was due the defendant from the firm of Castle Brothers Wolf & Sons, exceeding in amount the defalcation complained of, arising from the commission upon the profits promised by Mr. Lowenstein. Without discussing whether such a claim, unliquidated at the time of the alleged offense would be a defense in this prosecution, such claim is not, in the opinion of the Court, established by the evidence. If the contention of defendant is correct, there was due him when he was threatened with prosecution by Wolf, a sum much larger than the shortage complained of. The defendant, however, begged Wolf to desist from prosecution, urging that it would kill his wife and father, but not a word as to the claim that the firm was indebted to him for this or any amount. No reference was made to such claim to any of the employees of the firm when conversing with them and asking their intercession with Mr. Wolf in his behalf. The existence of such claim rests solely upon the testimony of the defendant, who informed his wife and the witness, Hosty, of the agreement of Lowenstein to pay said commission, and whose evidence is based upon such statements of the defendant. It is significant in

227 this action that the cablegram to Lowenstein does not refer to the commission alleged to have been promised by the latter. Defendant states that he made no mention of it for the reason that he supposed Lowenstein was aware of such agreement and,

therefore, reference thereto was unnecessary. The language of the message is not consistent with such theory. Why should defendant offer to refund, if Lowenstein knew that a large amount was due from the firm to defendant?

The explanation of defendant regarding the cablegram, as well as the statement of balances and book entries herein referred to are unsatisfactory and fail to account for the disappearance of funds and the wording of the cablegram. It is, in the opinion of the Court, an indisputable proposition of law, that where the evidence shows that the defendant, as book-keeper for a firm, receives money as such book-keeper to be paid to the firm, and makes an entry thereof in his books, and the book accounts show a shortage, that it is incumbent upon the defendant to account for said shortage, and in case he fails to do so, he is responsible under the law. It is admitted by defendant that he received the sum of 3500 pesos; that he charged it as paid to the Captain of the "Gulf of Venice"; that such entry was false; that said amount was subsequently transferred to different funds. The evidence shows that it remained unaccounted for, and defendant is unable to explain its final disposition from said books. The statements of defendant to the witnesses in this case, taken in connection with the book accounts, amount to a confession of guilt.

The court, therefore, finds, upon a consideration and comparison of all the evidence, that the guilt of defendant is proven beyond a reasonable doubt.

228 The Court therefore finds the defendant, Otis G. Freeman, Guilty of embezzlement of the sum of P3,500 Philippines Currency as charged in the complaint the property of Castle Brothers, Wolf & Sons, and does sentence him to imprisonment — presidio correctional, in the Insular Prison of Bilibid for the period of one year and nine months, and to restore to said Castle Brothers Wolf & Sons, the sum of P3,500 Philippines currency, or in lieu thereof to suffer subsidiary imprisonment for the period of seven months, and to pay the costs of prosecution.

Dated, Manila, P. I. October 12, 1906.

(Signed)

W. F. NORRIS, *Judge.*

The parties were present when the above judgment was rendered, to-day, Oct. 12, 1906.

(Signed)

C. A. SOBRAL,
Ass't Clerk.

That thereafter, and on the 15th day of October, 1906, a motion was filed in the office of the Clerk of the Court of First Instance as follows, to-wit:

(Same Title and Heading.)

Motion for a New Trial.

And the said Otis G. Freeman, the defendant above named, comes now by W. A. Kincaid, his attorney and moves the court for a new trial in the above entitled cause for the following reasons:

I.

The Court erred in finding that the firm of Castle Brothers, Wolf & Sons is a corporation doing business in the City of Manila;

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II.

The Court erred in not finding that said Castle Brothers, Wolf & Sons have no legal existence in the Philippine Islands, because (a) said Castle Brothers, Wolf & Sons is a partnership and not having registered their articles in the Mercantile Registry this action cannot be maintained at the complaint of said firm; (b) the complaint should have charged embezzlement of funds "the property of" (giving the names of the individuals composing said firm) "doing business under the name and style of Castle Brothers, Wolf & Sons;"

III.

The Court erred in not finding that Maurice F. Lowenstein had full power and authority to bind said Castle Brothers, Wolf & Sons by his promise or agreement made on behalf of said firm;

IV.

The Court erred in not finding that the accused and said Lowenstein entered into an agreement on or about the first day of November, 1903, whereby accused became the manager of the steamship department of said Castle Brothers, Wolf & Sons at a salary of two hundred and fifty dollars (\$250.00) United States currency, per month, together with twenty-five percent (25%) of the profits arising from or which might be earned by said steamship department under the management of said accused;

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V.

The Court erred in not finding that the accused is an industrial partner in said firm of Castle Brothers, Wolf & Sons;

VI.

The Court erred in not finding that the evidence in this cause at the most renders the accused liable to a civil action for an accounting; and the Court erred further in not dismissing this action without prejudice to such civil action.

VII.

The Court erred in not finding that said Maurice F. Lowenstein directed the accused to keep his agreement secret from the other employees of said Castle Brothers, Wolf & Sons.

VIII.

The Court erred in not finding that the accused told the witness Hosty at least twenty months before the commencement of this

action of the agreement existing between the accused and said Castle Brothers, Wolf & Sons, and his claim to twenty-five percent of the profits arising from said steamship department.

IX.

The Court erred in not finding that the profits arising from or earned by said steamship department during the management thereof by said accused amount to approximately the sum of
231 forty thousand pesos, and that accused was entitled to twenty-five percent of said sum.

X.

The Court erred in considering the books of account produced by said Castle Brothers, Wolf & Sons on behalf of the Government in this cause as evidence:

- (a) Because said books have never been audited;
- (b) Because it was not shown by any competent evidence that any shortage whatever exists in said books;
- (c) Because said books separated and considered apart from the general books of account of said Castle Brothers, Wolf & Sons are fragmentary and meaningless;
- (d) Because it was shown that many large amounts appearing on said books were in fact paid direct to the cashier of said Castle Brothers, Wolf & Sons and never came into the possession of the accused;
- (e) Because there was no evidence that the accused ever received the sum of thirty-five hundred pesos or any other specific sum;
- (f) Because said books of account were not supported by the original vouchers of any of the transactions which they purport to represent;
- (g) Because no vouchers were produced at the trial of this cause showing that accused had ever received any specific sum for or on account of said Castle Brothers, Wolf & Sons; and,
- (h) Because if said books of account show that said Castle Brothers, Wolf & Sons are entitled to any remedy or relief as against said accused, such remedy is at the very most a civil action for an accounting.

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XI.

The Court erred in holding in effect that the burden of proof rested upon the accused to explain to the satisfaction of the Court the alleged erroneous entries in said books of account.

XII.

The Court erred in not finding that errors in bookkeeping are no evidence whatever of the embezzlement charged.

XIII.

The Court erred in finding that on June 30th, 1906, after a conversation with Mr. Wolf regarding the irregularities in his books,

he, said accused, "made up a trial balance wherein he acknowledged that he was short in his accounts in the sum of P2,078.50."

XIV.

The Court erred in not finding from said trial balance of June 30th, 1906, that the accused had merely overdrawn his salary account in said sum of P2,078.50, and that such overdraft was expressly ratified, confirmed and approved by said Castle Brothers, Wolf & Sons in their letter of August 9th, 1906. (See Defendant's exhibit 1.)

XV.

233 The Court erred in considering the translation of the cablegram sent by the accused to Maurice F. Lowenstein (See, Government's Exhibit K) without reference to the code words used, and without reference to the difficulty of expressing the true meaning of accused by the use of a telegraphic code.

XVI.

The Court erred in finding that the accused appropriated the sum of P3,500.00 as charged in said complaint.

XVII.

The Court having found that the accused appropriated said sum of thirty-five hundred pesos, erred in not finding that said sum of thirty-five hundred pesos was in fact appropriated by him under a bona fide claim of right.

XVIII.

The Court erred in holding that it is "an indisputable proposition of law, that where the evidence shows that the defendant, as bookkeeper for a firm, receives money as such bookkeeper to be paid to the firm, and makes an entry thereof in his books, and the book accounts show a shortage, that it is incumbent upon the defendant to account for said shortage, and in case he fails to do so, he is responsible under the law," because, for the reasons stated in paragraph X of this motion, it has not been established that the "book accounts show a shortage" because until the contrary is shown by competent evidence and beyond all reasonable doubt it is a presumption of law that no such shortage exists; and, because if an audit of said books of account together with the original vouchers were had it is probable that no shortage whatever would appear.

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XIX.

The Court erred in not holding that the accused is presumed to be innocent, that this presumption of innocence is more than sufficient to overcome any apparent irregularities in his books of account, and consequently the Court erred in finding that "the guilt of the defendant is proven beyond a reasonable doubt."

XX.

The accused having invoked the rule requiring the witnesses for the government to leave the court room during the progress of the trial, the Court erred in allowing the witness Baum to remain in the Court room and assist the prosecution in its presentation of the case.

XXI.

The Court erred in not finding that the witness Arthur W. Baum is chief accountant for said Castle Bros.-Wolf & Sons, that as such chief accountant, he and not the accused is responsible for any irregularities which may eventually — shown to exist in the books of the steamship department.

Wherefore, Defendants prays that the judgment and sentence made and entered in this cause on the 12th day of October, 1906, be reversed, stricken from the files and held for naught, and that defendant be adjudged to go hence without day.

Manila, P. I. 13th October, 1906.

(Signed)

W. A. KINCAID,
Attorney for Defendant,
26 Plaza Cervantes, Manila.

Received copy:

(Signed) AYLETT R. COTTON,
Prosecuting Attorney.

235 That thereafter, and on the 16th day of October, the following order was made by the court, to-wit:

(Same heading and title.)

Order.

After an examination of the motion presented by the attorney for the accused in this cause, praying for a new trial of the same; and believing that the reasons adduced in support of the said motion are not pertinent, the said motion is denied; from which decision the defense except.

Manila, October 16, 1906.

(Signed)

W. F. NORRIS, *Judge.*

Be it known that today, the 16th of October, 1906, a copy of the foregoing order was sent to Mr. Kincaid.

(Signed)

C. A. SOBRAL,
Asst. Clerk.

Be it known that the accused in this case, Otis G. Freeman, has given a personal bond, united to folio 154 of bond book No. 1, for appeal; Messrs. M. A. Clark, 2 Escolta and H. E. Heacock of 42 Plaza Goiti, Santa Cruz, being the sureties: to which I certify.

Manila, October 17, 1906.

(Sgd.)

C. A. SOBRAL,
Assistant Clerk.

That thereafter, on the 17th day of October, 1906, an appeal was taken from the foregoing judgment and sentence as follows, to-wit:

(Same title and heading.)

And the said Otis G. Freeman, the defendant above named, comes now by W. A. Kincaid his attorney and appeals from
236 the judgment and sentence rendered in this cause on the 4th day of October, 1906, which said judgment was filed on the 12th day of October, 1906.

Manila, P. I., October 17th, 1906.

(Signed)

W. A. KINCAID,
Attorney for Defendant,
26 Plaza Cervantes, Manila.

Received copy this 17th October, 1906.

(Signed) JESSE GEORGE,
Prosecuting Attorney.

237 And that thereafter, and on the 16th day of January, 1907, the record in the said cause was remitted to the Clerk of the Supreme Court of the Philippine Islands by virtue of said appeal, accompanied by a letter of the Clerk of the Court of First Instance, Mr. J. McMicking.

That on the same day notices of the receipt of said cause in the Supreme Court were sent to the Attorney General and to Mr. W. A. Kincaid, the said cause being numbered 3779 in said Court. That on the 14th day of February, 1907, Mr. W. A. Kincaid attorney for the appellant, made written application for an extension of 30 days in which to file his brief and that such motion was granted by a resolution of the Court on the 16th of the same month.

That thereafter, and on the sixth day of March, 1907, the said attorney filed his brief for the defendant and appellant in the above entitled cause in the Office of the Clerk of the Supreme Court, to which brief was attached the receipt of the Office of the Attorney-General; and annexed thereto was the following assignment of errors, to-wit:

1.

The Trial Court erred in finding that the concern of Castle Brothers, Wolf & Sons is a corporation doing business in the City of Manila.

2.

The trial Court erred in not finding that the concern of Castle Brothers, Wolf & Sons has no legal personality and that no action, civil or criminal, can be sustained in the courts of the Philippine Islands on the complaint or information of said concern.

3.

The Trial Court erred in not finding that Maurice F. Lowenstein was the manager of Castle Brothers, Wolf & Sons and
238 as such had full power and authority to bind said concern by agreement, whether written or by parole, made by him on behalf of said firm.

4.

The Trial Court erred in not finding that appellant entered into an agreement with said Castle Brothers, Wolf & Sons whereby he became manager of the steamship department at a salary of two hundred and fifty dollars per month and 25% of the profits, and the trial court erred further in not finding that such profits approximate the sum of 40,000 pesos during the period from November, 1903, to July 31st, 1906.

5.

The Trial Court erred in not finding that appellant is an industrial partner in the steamship department of Castle Brothers, Wolf & Sons entitled to 25% of the profits earned by said department during his engagement; that as such industrial partner he could not be guilty of embezzlement (*estafa*) of the funds of said department.

6.

The Trial Court erred in not dismissing this cause without prejudice to a civil action for an accounting.

7.

The Trial Court erred in considering the books of accounts as evidence on behalf of the Government in this cause.

8.

The Trial Court erred in holding in effect that the burden of proof rested upon the defendant to explain to the satisfaction of the Court the apparent errors in said books of account.

9.

239 The Trial Court erred in holding that it is an indispensable proposition of law, that where the evidence shows that the defendant as bookkeeper for a firm receives money as such bookkeeper to be paid to the firm, and makes an entry thereof in his books, and the book account shows a shortage, that it is incumbent upon the defendant to account for said shortage and in case he fails to do so, he is responsible under the law."

10.

The Trial Court erred in not holding that the appellant is presumed to be innocent, that this presumption of innocence is evidence of such a character as to overcome any apparent irregularities in the books of account of the steamship department of said concern.

11.

The Trial Court erred in finding that "The guilt of the defendant is proven beyond a reasonable doubt."

12.

The Trial Court erred in finding that on July 30 defendant "made up a trial balance wherein he acknowledged that he was short

in his accounts in the sum of P2078.50", because said trial balance merely shows that appellant had overdrawn his personal account and as appears from defendant's exhibit one such overdraft was expressly recognized as an overdraft by George E. Wolf, General Manager for said Castle Brothers, Wolf & Sons.

13.

The Trial Court having found that appellant appropriated thirty-five hundred pesos erred in not finding that said sum was in fact appropriated by him under a bona fide claim of right.

14.

Appellant having invoked the rule requiring all witnesses to leave the court room during the progress of the trial, the court erred in allowing the witness Arthur W. Baum to remain in the court room and assist the Government in presenting its case.

240 That thereafter and on the 12th day of July, the brief of the Attorney-General was filed in the Clerk's Office, same bearing receipt of Mr. W. A. Kincaid.

That thereafter the said cause was set for hearing on the 19th day of September, 1907, and no one appearing in representation of either party, the case was taken under advisement by the Court.

That thereafter and on the thirteenth day of November, 1907, decision was rendered by the said Supreme Court in said cause, as follows:

241 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3779.

UNITED STATES

vs.

OTIS G. FREEMAN.

Decision.

This defendant was charged with the crime of estafa in a complaint in the words and figures following:

"That on or about the 13th day of January, 1906, in the city of Manila, P. I., the said Otis G. Freeman was then and there a servant, clerk, agent, employee, and manager of the steamship department of Castle Bros., Wolf and Sons, a corporation doing business in the Philippine Islands; that by virtue of his said duties and employment there, then and there came into his possession and into his charge large sums of money belonging to the said Castle Bros., Wolf & Sons, which sums of money were then and there received on de-

posit, for safe keeping, and under circumstances producing the obligation of delivering and returning the same to the said Castle Bros., Wolf and Sons; that the said Otis G. Freeman then and there willfully, unlawfully and feloniously, did of said moneys so received and held under his charge as aforesaid, with intent of profiting thereby, and without the consent of the said Castle Bros., Wolf and Sons, appropriate, misapply and convert to his own use the sum of three thousand five hundred (3,500) pesos, Philippine currency, equivalent and equal to seventeen thousand five hundred (17,500) pesetas, Philippine currency, the property of the said Castle Bros.,

Wolf and Sons; to the prejudice of the said Castle Bros.,
242 Wolf and Sons in the said sum of three thousand five hundred (3,500) pesos, Philippine currency, equivalent to seventeen thousand five hundred (17,500) pesetas, Philippine currency.

"Contrary to the form of the statute in such case made and provided."

Upon this complaint the defendant was duly arrested on the 8th day of August, 1906, and on the 11th day of August, 1906, presented the following motion for a bill of particulars:

"And now comes said Otis G. Freeman, the defendant above named by W. A. Kincaid, his attorney, and moves the court for an order directing that the complaint be made more definite and certain in this, to-wit: Said defendant is charged in said complaint with receiving large sums of money on or about the 13th day of January, 1906; and before answering said complaint it is necessary that the said defendant be informed of the particular amounts or sums of money received on or about the said 13th day of January, 1906, by whom said amounts were paid, and whether he, said defendant, is charged with the estafa of one particular amount received from some individual or firm, or whether said sum of thirty-five hundred pesos (P3500.00) Philippine currency, was made up from other smaller amounts, or otherwise. Until said complaint is made definite and certain in the particulars aforesaid, it is impossible for said defendant to intelligently answer the same.

"Wherefore, defendant prays that said motion be granted."

This motion for a bill of particulars was duly supported by an affidavit signed by the defendant.

243 This motion for a bill of particulars, on due consideration, was denied by the Judge of the Court of First Instance of the City of Manila, on the 16th day of August, 1906.

Notwithstanding the denial of the motion for a bill of particulars on the part of the lower court, the Prosecuting Attorney on the 13th day of September, 1906, filed a bill of particulars which was as follows:

"The following is a bill of particulars of the sums embezzled on which the complaint filed herein is founded:

That on or about November 1, 1903, the said Otis G. Freeman was employed as a servant, clerk, agent, employee, and manager of the steamship department of Castle Brothers, Wolf & Sons; that he held this position from the said date until on or about the 28th day of July, 1906; that as such manager of the steamship department

of the said Castle Brothers, Wolf and Sons, he had sole custody and control of the books and funds of the steamship department of the said Castle Brothers, Wolf & Sons, and was under the duty and obligation of keeping true books of account of all the receipts and disbursements made by him as such manager of the steamship department of the said Castle Brothers, Wolf & Sons; that the said Otis G. Freeman, on page 6 of the cash book under his sole custody and control, and in which cash book it was his duty to enter all sums of money received and disbursements made by him as manager of the steamship department of the said Castle Brothers, Wolf & Sons, did make an entry dated January 13, 1903, that he then had on hand the sum of P10,719.38; that on the same page and the same date, he made the following further entries of money received by him:

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"C. B. W. & S. Vale	P50.00
P. M. Co. P/O 12322 Spl. a/c U. S. N.....	333.20
" " 12323 Ins. No. 7.....	312.50
C. B. W. & S. Vale	50.00
Ldg. China 76.....	9.80
No. 21 2.69 26 .50 41 .50 48 2.85	
68 1.13 70 .50 71 .50 72 1.13	
Gulf of Venice—Frt. 16 Hd. Stock @ 64 @ 2/-3%....	630.15
Out Freight. No. 262 Doric 48.....	80.40
Ldg. Doric 48. No. 1 Younger50"
Making a total of	P12,185.92

That on page 7 of the said cash book, and under the said date, January 13, 1906, he did make the following entries of sums of money disbursed by him as aforesaid manager of the steamship department of the said Castle Brothers, Wolf & Sons:

"C. B. W. & S.	Deposit 2111	Jan'y 12	P6,354.09
Gulf of Venice	Immigration	"	8th.....	4.00
	Cash Captain	"	11th.....	3,550.00
	Medical Services	"	12th.....	30.00"

That on the same page and under the same date he did make an entry of having cash on hand to the amount of P2,247.84; that the entry Cash Captain, Jan'y 11th—P3,550.00 so made in said cash book on said date January 13, 1906, as aforesaid, was a false entry and the said Otis G. Freeman did not on said 11th day of January, 1906, or at any other time, pay to the Captain of the steamship "Gulf of Venice" the sum of P3,550, but then and there did only pay to the said Captain of the said steamship "Gulf of Venice" a sum of money not greater than fifty pesos, Philippine currency; that by this false entry so made as aforesaid, the said defendant was enabled to falsely account for and conceal the embezzlement of the sum of 3500 pesos, Philippine currency, which he embezzled at this time, or at some other time, the exact date or dates of the said embezzlement or embezzlements not being known to the

undersigned, or to Castle Brothers, Wolf & Sons, but only to the defendant; that the defendant appropriated the sum of 3,500 pesos from funds in his possession belonging to the said Castle Brothers, Wolf and Sons while he was employed as manager of the steamship department of the said Castle Brothers, Wolf & Sons, on or about January 13, 1906; that it is impossible for the undersigned or for Castle Brothers, Wolf and Sons to state at what time the defendant embezzled any particular sum of money comprising the said 3,500 pesos, or to show what particular items make up the said 3,500 pesos, or from what particular firm or individual any particular item of this 3,500 pesos was received, as this information is exclusively and solely within the knowledge of the defendant."

(Signed)

AYLETT R. COTTON,
Prosecuting Attorney."

The defendant was duly arraigned in the court below and plead "Not Guilty" of the crime charged in the said complaint.

After hearing the evidence adduced during the trial of the cause, the lower court found the following facts to be true:

1st. That the defendant had been in the employ of Castle Bros., Wolf and Sons for about three years prior to the first day of July, 1906.

2nd. That during that period the defendant was in charge of the steamship department of said Castle Bros., Wolf and Sons, receiving and disbursing moneys, keeping books pertaining to said department; that these books of account consisted of a cash book, journal and ledger, which were in the handwriting of the defendant.

3rd. That the defendant had made statements to the witnesses Mr. Wolf, Mr. Baum and Mr. Hosty, which statements, taken together with various entries in the books, amounted to a confession of his guilt of the crime charged in said complaint.

4th. That on the 11th day of January, 1906, the defendant entered in his cash book (Exhibit B) "Cash paid to Captain, Gulf of Venice, P3500.00." That this entry was false was admitted by the defendant.

5th. That twelve days before the false entry of the 11th of January, to-wit, on the 31st day of December, 1905, the defendant struck a trial balance showing a shortage in his accounts of about P3,000.00.

6th. That on the 30th day of June, 1906, the defendant made another trial balance wherein he acknowledged that he was short in his accounts in the sum of P2,078.50.

7th. That the defendant, a few days after the trial balance of June 30th, 1906, admitted to the witness Wolf, that he, the defendant, was short in his accounts, but insisted that the shortage did not exceed the sum of P3,000.00.

8th. The defendant said to the witness Hosty, "I don't know why I took the money," and in addition stated that he had taken about P2700.00 but did not know from what account said sum was taken.

9th. That the contention of the defendant that he was to receive from Castle Bros., Wolf & Sons a portion of the profits resulting from

the "Steamship department of the said firm," and that the firm of Castle Bros., Wolf and Sons owed him, the defendant, a much larger sum than the said shortage, was not supported by the evidence.

Upon these facts the lower court found the defendant guilty of the crime charged in said complaint and sentenced him to be imprisoned for a period of one year and nine months of presidio correccional, and to restore to Castle Bros., Wolf and Sons the
247 sum of P3500.00, or in lieu thereof to suffer subsidiary imprisonment for a period of seven months and to pay the costs of the prosecution. From this sentence the defendant appealed to this court and made the following assignments of error:

1st. The Court erred in finding that the concern of Castle Bros., Wolf and Sons is a corporation doing business in the City of Manila.

2nd. The Court erred in not finding that the concern of Castle Bros., Wolf & Sons has no legal personality and that no action, civil or criminal can be sustained in the courts of the Philippine Islands on the complaint or information of said concern.

3rd. The Court erred in not finding that Morris F. Lowenstein was the manager of Castle Bros., Wolf and Sons and as such had full power and authority to bind said concern by agreement whether written or by parole, made by him on behalf of said firm.

4th. The Court erred in not finding that the appellant entered into an agreement with said Castle Bros., Wolf and Sons, whereby he became manager of the steamship department at a salary of \$250.00 per month and 25% of the profits; and the trial court erred further in not finding that such profits approximated the sum of P40,000.00 during the period from November, 1903, to July 31st, 1906.

5th. The trial court erred in not finding that the appellant is an industrial partner in the steamship department of Castle Bros., Wolf and Sons and entitled to 25% of the profits earned by said
248 department during his management; that as such industrial partner he could not be guilty of embezzlement (estafa) of the funds of said department.

6th. The trial court erred in not dismissing this action, without prejudice to a civil action for an accounting.

These assignments of error may be classified under two heads, the first, including the first and second, relating to the existence of Castle Bros., Wolf and Sons as a legal entity, and the second, including the 3rd, 4th, 5th and 6th, relating to the alleged relation existing between the defendant and the said entity of Castle Bros., Wolf and Sons.

With reference to the first assignment of error, the defendant admits that he entered into the employment of the alleged firm or corporation, whichever it may be, at a fixed salary, and received large sums of money belonging to the same. Admitting this fact on the part of the defendants, it does not require much argument to show that he thereby incurred the obligation to turn over to said firm or corporation such sums of money so received, and that a failure so to do rendered him liable under the provisions of the Penal Code. (Paragraph 5, Article 535.) U. S. vs. Cockrill, No. 2330.

With reference to the second group of assignments of error, the only evidence adduced during the trial to show that the defendant was entitled to a percentage of the profits resulting from the management of the department over which he had control as an employee of said firm or corporation, was his own statements. The fact was strenuously denied by Mr. Wolf, manager of the said firm or corporation. The defendant claimed that he was entitled to 25% of the profits, which he alleged were about P40,000.00 during the two years and more of employment on the part of the defendant, but notwithstanding the fact that he was claiming such a large sum of
249 money no mention of the same was ever made to Mr. Wolf, the manager, nor did he ever make any entries in his books indicating that the company owed him this sum, or any other sum growing out of the profits of the business. Upon the contrary, the books show, according to his own statement, that he was indebted to the firm in the sum of P2,087.50.

If the defendant had been entitled, as a matter of fact, to a percentage of the large profits which his department had earned, which was more than enough to cover his shortage, why did he not call the attention of Mr. Wolf to this fact at the very earliest opportunity, when the latter confronted him with a shortage in his accounts. During the time Mr. Wolf was investigating the condition of the accounts of the defendant, the latter sent a cablegram to Mr. Lowenstein, who was then in the United States, in the words following:

"Lowenstein, c/o Castle Bros., Wolf & Sons, San Francisco:

"Accounts are not in order. It is a large amount. Can refund. Can you appeal. Suspend proceedings until further notice.

FREEMAN."

The defendant in his testimony stated that his arrangement with the firm or corporation by which he was to receive a percentage of the profits had been made with Mr. Lowenstein; yet notwithstanding that fact, in the above cablegram he fails to demand from Mr. Lowenstein a compliance with the alleged agreement or contract. We are unable to find in the record sufficient proof to sustain the contention of the defendant that he was to share in the profits resulting from his management of the particular business under his control.

250 The lower court found that the defendant had appropriated to his own use out of the moneys received in his capacity as employee of the firm of Castle Bros., Wolf and Sons, the sum of P3500.00. The defendant, during the trial in the lower court, attempted to show that at times money which was due his department was paid directly to the cashier of the firm of Castle Bros., Wolf and Sons, and that, therefore, he had no account of such receipts. This fact was admitted by the cashier, so that we are unable to find that the amount of funds appropriated by the defendant was equal to P3500.00.

The defendant admitted to several of the witnesses who appeared during the trial that he was short in his accounts in a sum equal of

from P2700.00 to P3000.00. The defendant himself in a trial balance made on or about the 30th of June, 1906, after he knew that his accounts were being investigated by his employer, acknowledged over his own signature that he owed the firm the sum of P2078.50. This trial balance seems to constitute proof positive that he had received this sum for the benefit of his employer, and which he had not, upon request, returned to said employer.

We are of the opinion and so hold that the evidence shows, beyond peradventure of doubt, that the defendant did receive the sum of P2078.50, while acting as employee of the firm of Castle Bros., Wolf and Sons, with the obligation to return the same to said firm. This finding, of course, will in no way estop the said firm of Castle Bros., Wolf and Sons from recovering in a civil action from the defendant any sum or sums in excess of this amount which are found to be due to the said firm. The only charge which this
251 finding makes in the conclusion of the lower court is in the amount of money which must be returned to the firm of Castle Bros., Wolf and Sons by virtue of this sentence.

It is the judgment of this court that the sentence of the lower court be affirmed with this modification, and that the defendant be sentenced to be imprisoned for a period of one year and nine months of presidio correccional, and to restore to Castle Bros., Wolf and Sons the sum of P2078.50, or in lieu thereof to suffer subsidiary imprisonment for a period not to exceed one-third of the principal penalty, and to pay the costs.

It is so ordered.

(Signed)

E. FINLEY JOHNSON.

We concur:

(Signed) C. S. ARELLANO.
" FLORENTINO TORRES.
" A. C. CARSON.
" CHARLES A. WILLARD.
" JAMES F. TRACEY.

That thereafter and on the 13th day of November, 1907, notice of such decision was sent to the Attorney-General and to Mr. W. A. Kincaid, attorney for the appellant.

That on the 14th day of November, 1907, the following was filed in the Clerk's Office of the Supreme Court, to-wit:

(Same title and heading.)

Now comes the accused and appellant in the above entitled cause and excepts to the decision of the Court dictated in the same.

It is therefore prayed that this exception be received as interposed in due time and form.

Manila, November 14, 1907.

252

(Signed)

W. A. KINCAID,

Attorney for Accused and Appellant.

Received Copy:

(Signed) ISIDRO PAREDES, *Ass't Att'y.*

That on the 18th day of November, 1907, a copy of the following was remitted by the Acting Clerk of the Supreme Court to the Attorney-General and Mr. W. A. Kincaid, to-wit:

SIR: This Court in session the 15th inst., resolved as follows:

"Having examined the document presented by Mr. W. A. Kincaid, excepting to the decision dictated by this Court on the 13th instant, in case No. 3779, The United States vs. Otis G. Freeman, for the crime of estafa, the Court says: Unite this document to the record in order that it may appear for proper effect."

Of which I inform you for your information."

That thereafter and on the 23rd day of November, the following motion for a new trial was presented in the Office of the Clerk of the Supreme Court, to-wit:

R. G. No. 3779.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,
versus
OTIS G. FREEMAN, Defendant and Appellant.

Motion for Rehearing.

Comes the accused and appellant and excepts to the decision dictated in this cause the 13th of November, 1907, and prays
253 the Court to grant a rehearing for the following reasons:

I.

The Court erred in holding that the proofs were sufficient to convict the accused.

II.

The Court erred in refusing to consider the first two assignments of error specified in the brief of the accused, which are here reiterated and made a part hereof.

III.

The Court erred in finding that the accused incurred the obligation of delivering to the firm or corporation of Castle Brothers, Wolf & Sons the sums mentioned in said decision.

IV.

The Court erred in not finding that the accused and appellant entered into a contract with said Castle Brothers, Wolf & Sons, by which he became manager of the steamship department, at a salary of \$250.00 and 25% of the profits; and the court further erred in

not finding that the said profits amounted approximately to the sum of 40,000 pesos during the period between November, 1903, to the 31st of July, 1906.

V.

The Court erred in not finding that the appellant is an industrial partner of the steamship department of Castle Brothers, Wolf & Sons, entitled to receive 25% of the profits realised by the said department during his management, and that as such industrial partner he could not be guilty of the embezzlement of the funds of such department.

254

VI.

The Court erred in finding that the accused and appellant received the sum of 2087.50.

VII.

N

The Court erred in finding that the accused incurred the responsibility provided by the Penal Code in paragraph 5, article 535.

VIII.

The Court erred in not dismissing this case, without prejudice to the right to institute a civil action for the rendition of the accounts.

IX.

The Court erred in affirming the sentence of the trial court, that the accused should be sentenced to one year and nine months of presidio correccional and to return to Castle Brothers, Wolf & Sons the sum of 2078.50, or otherwise to suffer subsidiary imprisonment for a period of not to exceed a third part of the principal penalty, and to pay the costs.

Manila, November 23, 1907.

(Signed)

KINCAID & HURD,
Attorneys for Appellant.

Received Copy today, Nov. 23, 1907.

(Signed) JOVITO YUSAY,
Ass't Attorney.

Thereafter, and on the 26th day of November, 1907, the following notice was sent to the Attorney-General and to Messrs. Kincaid & Hurd, to-wit:

SIR: The Supreme Court in session the 25th instant, adopted the following resolution:

"After an examination of the document presented by Messrs. Kincaid and Hurd, in case No. 3779, The United States vs. Otis G. Freeman, pra-ing that, for the reasons therein set out, a new hearing be granted by this Court upon the decision rendered the 13th instant, the Court says: The same is denied."

255 Which is furnished you for your information.

That on the 26th day of November, 1907, final judgment was entered in said cause as follows, to-wit:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiffs and Appellees,

vs.

OTIS G. FREEMAN, Defendant and Appellant.

Final Judgment. November 26, 1907. Judgment Book 5, F. Register No. 3779.

This Court having acquired the due jurisdiction to hear the above entitled cause, which has been submitted by both parties for decision, and after a review by this Court of the record, its decision and order for final judgment having been filed on the thirteenth day of November, one thousand nine hundred and seven;

By virtue of said order the decision appealed from the Court of First Instance of Manila, dated the twelfth of October, one thousand nine hundred and six is hereby modified, and the accused is sentenced to be imprisoned for a period of one year and nine months of presidio correccional, and to restore to Castle Bros., Wolf & Sons the sum of P2078.50, or in lieu thereof to suffer subsidiary imprisonment for a period not to exceed one-third of the principal penalty, and to pay the costs (which amount to twelve dollars, gold), for the collection of which the Judge of the First Instance will proceed according to law.

It is further ordered that said cause be returned to the Court of its origin for proper action.

[Seal of Supreme Court.]

(Signed)

256

R. HERAS,
*Acting Clerk of the Supreme Court
of the Philippine Islands.*

Thereafter, and on the 27th day of November, there was filed in the Clerk's Office of the Supreme Court the following exception; to-wit:

(Same Title and Heading.)

Now comes the accused and appellant and excepts to the resolution of the Court denying the motion for a new trial presented in this cause.

Therefore it is prayed that the Court admit this exception as interposed in due time and form.

Manila, November 27, 1907.

(Signed)

KINCAID & HURD,
Attorneys for Accused and Appellant.

Received copy, same date,

(Sgd.) ISIDRO PAREDES,
Ass't Att'y.

That on the same date the following exception was also filed in the Office of the Clerk, to-wit:

(Same Title and Heading.)

Now comes the accused and appellant and excepts to the final judgment dictated in said cause.

Therefore it is prayed that the Court admit this exception as interposed in due time and form.

Manila, November 27, 1907.

(Signed)

KINCAID & HURD,
Attorneys for Accused and Appellant.

Received copy this date.

(Sgd.) ISIDRO PAREDES,
Ass't Att'y.

Thereafter, and on the 30th of November, 1907, the following notice was sent to the Attorney-General and Messrs. Kincaid and Hurd, to-wit:

SIR: This Court, in session the 29th instant, adopted the following resolution:

"After an examination of the exceptions presented by Messrs. Kincaid & Hurd to the resolution of this Court denying the motion for a new trial dated the 25th instant, and against the final judgment entered on the 26th of this month, in cause No. 3779, The United States vs. Otis G. Freeman, for the crime of estafa, the Court says: unite these documents to the proper record in order that they may appear and have proper effect.

Which I transmit to you for your information.

(Signed)

R. HERAS,
Acting Clerk, Supreme Court, P. I.

Thereafter and on the sixth day of December, 1907, the following was filed in the Office of the Clerk of the Supreme Court, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,

vs.

OTIS G. FREEMAN, Defendant and Appellant.

Comes Otis G. Freeman, defendant and appellant in the above entitled cause and represents:

I.

That judgment has been rendered in said cause by which the judgment of the Court of First Instance convicting the petitioner Otis G. Freeman for the offense of embezzlement to one year and nine months imprisonment, to restore to Castle

Brothers Wolf & Sons the sum of P2500.00 or suffer subsidiary imprisonment for the period of nine months, in violation of the Philippine Bill as appears from the accompanying assignment of errors.

II.

Wherefore the petitioner prays that he be granted a Writ of Error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands with a supersedeas of the judgment, and that upon the execution and approval of a bond in such sum as may be deemed sufficient, conditioned as required by law, he be admitted to bail pending such Writ of Error, in order that the judgment may be revised by the Supreme Court of the United States upon the assignment of errors presented with this petition.

He also prays that the record of the cause be ordered translated from Spanish to English in conformity with the rule prescribed by the Supreme Court of the United States.

(Signed)

KINCAID & HURD,
Attorney for Petitioner.

That at the same time, and in connection therewith, the following assignment of errors was filed, to-wit:

UNITED STATES OF AMERICA:

Supreme Court of the United States, Washington, D. C.

OTIS G. FREEMAN, Plaintiff in Error,

vs.

THE UNITED STATES, Defendant in Error.

259

Assignment of Errors.

Comes now the accused and states to the Court that in records and proceedings in this case manifest errors *has* been committed, that is to say:

I.

The Court erred in holding that the evidence was sufficient to justify the conviction of the defendant.

II.

The Court erred in refusing to consider the first two assignments of error specified in the brief of the accused which assignments are hereby made a part hereof.

III.

The Court erred in finding that the accused incurred the obligation of delivering the sums mentioned in the said decision to the firm or corporation of Castle Bros. Wolf & Sons.

IV.

The Court erred in refusing to find that the accused and appellant entered into a contract with said Castle Brothers Wolf and

Sons, by which he became the manager of the steamship department with a salary of two hundred and fifty dollars and twenty five per cent of the earnings; the Court also erred in refusing to find that said earnings amounted to approximately forty thousand pesos during the period between November, 1903 and July 31, 1906.

V.

The Court erred in refusing to find that the appellant is an industrial partner of the steamships department of Castle Brothers Wolf and Sons entitled to receive 25% of the earnings realized by said department during the time the same is earned, and that as such industrial partner he could not be guilty of the embezzlement of the funds of said department.

260

VI.

The Court erred in finding that the accused received the sum of 2087.50.

VII.

The Court erred in finding that the accused incurred the responsibility provided in Article 533, paragraph 5 of the Penal Code.

VIII.

The Court erred in refusing to dismiss this cause without prejudice to the right to institute a civil action for the rendition of accounts.

IX.

The Court erred in affirming the judgment of the Court of First Instance and the sentencing of the accused to one year and nine months of presidio correccional and to repay to Castle Brothers Wolf and Sons the sum of 2087.50 or otherwise to suffer subsidiary imprisonment for a period not to exceed a third part of the principal penalty and to pay the costs.

X.

The evidence does not show that the accused is guilty of the crime charged beyond a reasonable doubt.

XI.

The Court erred and violated the Constitutional Law of the Philippines (The Act of Congress of July 1st, 1902) in sentencing the accused in this case to suffer subsidiary imprisonment which sentence is in effect that of imprisonment for debt.

Manila, November 30, 1907.

(Signed)

KINCAID & HURD,
Attorneys for the Plaintiff in Error.

261 Thereafter the following writ of error was allowed, to-wit:

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between the United States, plaintiff and appellee, and Otis G. Freeman, defendant and appellant, a manifest error hath happened to the great damage of the said Otis G. Freeman, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the — day of — 1908, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause to be done therein to correct that error, what of right, and according to the law and customs of the United States
262 should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the — day of — in the year of our Lord, 1907.

*Clerk of the Supreme Court of the
Philippine Islands.*

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Otis G. Freeman in the sum of Six Thousand pesos payable to the defendant in error, conditioned as required by law, to be approved by me, he shall be entitled to his liberty pending such writ of error.

(Signed)

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court of the
Philippine Islands.*

That thereafter in the said record, the following citation appears, to-wit:

THE UNITED STATES OF AMERICA, ss:

To Attorney General for the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Otis G. Freeman is plaintiff in error, and the United States defendant in error, to show cause

if any there be, why the judgment in said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

263 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 6th day of December, in the year of Our Lord, 1907.

(Signed) E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court of the
Philippine Islands.*

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 6th day of December, 1907.

(Signed) GREGORIO ARANETA,
Attorney General for the Philippine Islands.

And that on the sixth day of March, 1908, there was filed in the Office of the Clerk of the Supreme Court, an enlargement of the time, of which the following is a copy, to-wit:

UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

R. G. No. —.

O. G. FREEMAN, Plaintiff in Error,
vs.

THE UNITED STATES, Defendant in Error.

Good reasons appearing therefor, it is hereby ordered that the time for returning, docketing and filing the writ of error allowed by me in the above entitled cause, in the Supreme Court of the United States, be enlarged so that the same shall not expire before the first day of May, 1908.

Done in Manila the 6th day of March, 1908.

(Signed) E. FINLEY JOHNSON,
*Associate Justice, Supreme Court,
Philippine Islands.*

264 That thereafter and on the 13th day of March, 1908, the following stipulation was filed in the Clerk's Office of the Supreme Court, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

No. 3779.

THE UNITED STATES, Plaintiff,
vs.
OTIS G. FREEMAN, Defendant.

Stipulation and Agreement.

It is hereby stipulated and agreed that the exhibits in the above entitled case be not included in the record elevated to the Supreme Court of the United States, their consideration being unnecessary in the determination of the questions involved.

(Signed)

GREGORIO ARANETA,
Attorney for the Government.

(Signed)

KINCAID & HURD,
Attorneys for the Defendant.

That thereafter and on the 14th of the same month, the Supreme Court of the Philippine Islands approved said stipulation by a resolution of that date. And that thereafter the following order was made, to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

No. —.

THE UNITED STATES, Plaintiff,
vs.

265

OTIS G. FREEMAN, Defendant.

Order.

It appearing that although the record in this case has been completed for transmission to the Supreme Court of the United States, owing to an unusual delay of more than two weeks in the shipment of mail to the United States it would be impossible for the record to reach Washington within the time already fixed by this Court, it is hereby ordered that the time for the presentation of such record in Washington be extended to and including the twentieth day of May, 1908.

(Signed)

E. FINLEY JOHNSON,
Judge Who Granted the Writ of Error.

Dated at Manila, P. I. March 21, 1908.

[Seal of the Supreme Court.]

266 That thereafter and on the 31st of March, 1908, there was filed in the office of the clerk of the Supreme Court a stipulation, of which the following is a copy; to-wit:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

R. G. No. —.

THE UNITED STATES, Plaintiff,
vs.
OTIS G. FREEMAN, Defendant.

Stipulation and Agreement.

It is hereby stipulated and agreed that the books of account which were presented as exhibits in the above entitled case be not included in the record elevated to the Supreme Court of the United States, their consideration being unnecessary in the determination of the questions involved.

Manila, March 31, 1908.

(Signed)

GREGORIO ARANETA,
Attorney General.
KINCAID & HURD,
Attorneys for the Defendant.

"

267 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Philippine Islands, before you, or some of you, between the United States, plaintiff and appellee, and Otis G. Freeman defendant and appellant, a manifest error hath happened to the great damage of the said Otis G. Freeman, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the Fourth day of April, 1908, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the

268 United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of

the United States the Sixth day of December in the year of Our Lord, 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
*Acting Clerk of the Supreme Court
of the Philippine Islands.*

The foregoing writ of error is allowed and it shall operate as a supersedeas of the judgment complained of, and upon the execution of a bond by Otis G. Freeman in the sum of six thousand pesos payable to the defendant in error, conditioned as required by law, to be approved by me, he shall be entitled to his liberty pending such writ of error. Dated this 6th day of December, 1907.

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

269 THE UNITED STATES OF AMERICA, ss:

To Attorney General for the Philippine Islands:

You are hereby cited and a-monisged to be in and appear at the Supreme Court of the United States, to be holden at Washington, within one hundred and twenty days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Otis G. Freeman is plaintiff in error, and the United States defendant in error, to show cause if any there be, why the judgment in said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 6th day of December in the year of Our Lord, 1907.

[Seal Corte Suprema, Islas Filipinas.]

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 6th day of December, 1907.

GREGORIO ARANETA,
Attorney General for the Philippine Islands.

270 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Otis G. Freeman was appellant, and the United States was appellee, a final judgment was rendered by said Supreme

Court on the twenty-sixth day of November, A. D. 1907, in favor of the said The United States, and against the said Otis G. Freeman, and that on the sixth day of December, A. D. 1907, said Otis G. Freeman sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court this sixteenth day of March, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

271 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff and Appellee,

vs.

OTIS G. FREEMAN, Defendant and Appellant.

Bond.

Whereas Otis G. Freeman defendant and appellant in the above entitled cause has been found guilty in the Supreme Court of the Philippine Islands of the crime of estafa and has obtained a writ of error from the Supreme Court of the United States to the Supreme Court of the Philippine Islands for the reversal of said sentence, and

Whereas by order of the Honorable E. Finley Johnson, Justice of the Supreme Court of the Philippine Islands who granted the said writ of error said Otis G. Freeman has been granted his liberty provisionally during the prosecution of said writ of error, under bond in the sum of six thousand pesos Philippine Currency.

Now therefore we Otis G. Freeman as principal and Lionel D. Hargis, C. C. Brower, M. A. Clarke and Emily A. Mobley as sureties obligate ourselves jointly and severally by these presents that said above named Otis G. Freeman will pay any fine which the

272 Supreme Court of the United States may order or that he will surrender himself for the execution of the judgment which said Court may render, or in case the cause be remitted for a new trial that he will appear before the court to which the cause may be remitted and submit to the orders and process of the same, or in case he shall fail to comply with any of these conditions that he will pay to the United States the sum of six thousand pesos, Philippine currency.

In witness whereof we have executed this instrument this 9 day of December, A. D. 1907.

(Signed)

"
"
"
"

OTIS G. FREEMAN.
M. A. CLARKE.
EMILY A. MOBLEY.
LIONEL D. HARGIS.
C. C. BROWER.

PHILIPPINE ISLANDS,
City of Manila:

Before me the undersigned authority on this day personally appeared M. A. Clarke and Emily A. Mobley who being first duly sworn on oath say that they are the persons who executed the foregoing bond that they are solvent and the owners of real property in the Philippine Islands, and that each of them is the owner of property of the value stated in said bond exclusive of all his debts and obligations and exclusive of property exempt from execution.

(Signed)

M. A. CLARKE.

EMILY A. MOBLEY.

Subscribed and sworn to before me this 9 day of December, A. D. 1907; said affiants presented their respective cedulas No. A 1500210 issued March 7, 1907, at Manila. Emily A. Mobley presented no cedula, same not being necessary under law.

[Seal of Supreme Court & revenue stamp.]

(Signed)

SAM FERGUSON,

Deputy Clerk of the Supreme Court of the Philippine Islands, ex-Officio Notary Public.

I hereby consent to and approve of the execution of the foregoing instrument by my wife Emily A. Mobley.

(Signed)

SETH P. MOBLEY.

Approved,

(Signed)

E. FINLEY JOHNSON,

Associate Justice Supreme Court.

273 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing two hundred and seventy-two pages are a true and correct transcript of the record in the case of The United States vs. Otis G. Freeman, R. G. No. 3779, including the original writ of error, allowance thereof, and my certificate of such allowance, copy of the writ of error bond, and copies of exhibits "I, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, and BB, of the Government, and exhibit No. 1 of the defense.

In witness whereof I have this day signed my name and affixed the seal of the said Supreme Court in Manila, Philippine Islands, the first day of April, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

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In the Supreme Court of the United States.

October Term, 1909.

No. 156.

OTIS G. FREEMAN, Plaintiff in Error,

vs.

THE UNITED STATES.

In above entitled cause, it is hereby stipulated that the Clerk may cause the transcript of record to be printed, omitting the testimony and exhibits embraced in pages 16 to 222 inclusive in the transcript of record.

A. B. BROWNE,
ALEX. BRITTON,
B.,

Attorneys for Plaintiff in Error.

J. A. FOWLER,

As't Att'y Gen'l.

Sept. 13, '09.

275 [Endorsed:] File No. 21,162. Supreme Court U. S. October Term, 1909. Term No. 156. Otis G. Freeman, Pl'ff in Error, vs. The United States. Stipulation to omit part of record in printing. Filed Sept. 14th, 1909.

Endorsed on cover: File No. 21,162. Philippine Islands Supreme Court. Term No. 156. Otis G. Freeman, plaintiff in error, vs. The United States. Filed May 6th, 1908. File No. 21,162.